

STATE OF UTAH
DIVISION OF WILDLIFE RESOURCES

IBLA 84-296

Decided October 26, 1984

Appeal from separate decisions of the Utah State Office and the Richfield, Utah, District Office, Bureau of Land Management, rejecting applications for public lands under the Recreation and Public Purposes Act. U-42654, U-53402, U-53405, and U-53406.

Affirmed.

1. Appeals -- Public Lands: Classification -- Rules of Practice: Appeals: Dismissal

The Board of Land Appeals has no jurisdiction to hear appeals from BLM decisions denying petitions for classification.

2. Applications and Entries: Generally -- Public Lands: Disposals of: Generally -- Recreation and Public Purposes Act

The Secretary of the Interior has the discretionary authority to grant an application for public lands under the Recreation and Public Purposes Act, 43 U.S.C. §§ 869 to 869-4 (1982). A decision rejecting such an application for land to be used for wildlife habitat management will be affirmed where it is based on a policy reasonably related to the public interest and appellant has shown no error therein.

APPEARANCES: Douglas F. Day, Director, Division of Wildlife Resources, State of Utah, for appellant; David K. Grayson, Assistant Regional Solicitor, Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Division of Wildlife Resources (DWR), State of Utah, appeals from separate decisions of the State Director, Utah State Office, Bureau of Land Management (BLM), and the District Manager of the Richfield District Office, BLM, rejecting applications for public lands under the Recreation and Public Purposes Act, 43 U.S.C. §§ 869 to 869-4 (1982). The Utah State Office rejected applications U-42654, U-53405, and U-53406 by decision dated

January 6, 1984. ^{1/} The Richfield District Office rejected application U-53402 by decision dated January 17, 1984.

On March 22, 1979 (U-42654), and August 30, 1982 (U-53402, U-53405, U-53406), appellant filed applications under the Recreation and Public Purposes (R&PP) Act for lands in Sevier, Sanpete, Jaub, and Piute Counties, Utah. In its applications appellant indicated that it proposed using these lands for wildlife habitat management for winter range for deer and other game and non-game species. Future management plans for these lands include proper range use, seeding where appropriate, fence maintenance, and vegetative treatment. In addition, a portion of the lands requested in U-53402 would be managed to preserve a special form of antelope bitterbrush vegetation.

The State Office decision rejecting appellant's applications was based on a policy statement issued by the State Director on December 20, 1983, which reads as follows: "Public lands can be transferred to DWR only if capital expenditures are to be made for purposes other than vegetative manipulation and fencing; except in those cases where the transfer would 'round out' an existing DWR ownership pattern." (Emphasis in original.) The exception to the policy is further explained by the statement that: "Public lands used for the exception should usually be isolated tracts."

The BLM State Office decision asserts that the policy is based on four considerations:

1. The Federal Land Policy and Management Act (FLPMA) of 1976 ^{2/} sets a United States policy for multiple use and sustained yield on public lands; one charge is to ". . . provide food and habitat for fish and wildlife . . ." BLM manages habitat along with other resources.
2. FLPMA contains a policy statement for retention unless disposal will serve the national interest. Disposal of critical habitat is considered to be in the national interest only in extremely unusual circumstances.
3. The intent of the Recreation and Public Purposes Act is to provide land at a reduced rate or free of charge for such things as churches, schools, recreation facilities (parks), sanitary land fills, etc.
4. The BLM Washington Office has informed us not to use R&PP where other authority exists to allow or accomplish the proposal. Washington Office Instruction Memorandum 84-33, while addressing rights-of-way and R&PP authorities, conveys this message. The other authority is a cooperative agreement under either the Sikes Act ^{3/} or the FLPMA.

^{1/} The State Office decision also rejected application U-52356, but appellant's notice of appeal did not include this application.

^{2/} 43 U.S.C. §§ 1701 to 1784 (1982).

^{3/} The reference is apparently to the Act of Sept. 15, 1960, P.L. 86-797, 74 Stat. 1052, as amended, 16 U.S.C. §§ 670a to 670g (1982).

The decision of the BLM State Director concluded that the lands identified in the applications did not meet the requirements of the policy and rejected applications U-42654, U-53405, and U-53406.

The District Manager's decision also cited the State Director's policy in rejecting application U-53402. The District Manager noted that the application was not appropriate under the Recreation and Public Purposes Act since capital expenditures were not being made for purposes other than vegetative manipulation and fencing. He also noted that the requested lands were being sought by the State of Utah through exchange with the Federal Government under Project Bold.

Appellant's main contentions in its statements of reasons for appeal are that it was misled into believing that it qualified under the "Good Neighbor Policy"; ^{4/} that the lands round out existing DWR ownership and plans for the area; that it contributed funds which were used by BLM to enhance the area for wildlife purposes and improve wildlife habitat on critical winter range; and that use of funding sources for habitat improvement indicated that wildlife was the primary consideration in Federal management.

In response BLM moves to dismiss the appeals stating that the decisions appealed from are actually classification decisions over which the Board has no jurisdiction. BLM contends that even if the Board does have jurisdiction to review the decisions, they should be affirmed because they are based upon sound policy judgments.

[1] The Board of Land Appeals has no jurisdiction to hear appeals from BLM decisions denying petitions for classification. 43 CFR 4.410(a)(1) and 2450.5(d); Duella M. Adams, 70 IBLA 63 (1983). Under 43 CFR 2450.5, an initial classification decision of a State Director becomes a final order of the Secretary of the Interior 30 days after receipt by the parties-in-interest if the Secretary has not, either on his own motion or that of any protestant, petitioner-applicant, or the State Director, exercised his supervisory authority to review the decision. However, the decisions appealed from do not purport to be classification decisions. Further, the files contain inadequate records to disclose the present classification of the subject lands. Thus, we decline to dismiss the appeals on the record before us.

[2] The Recreation and Public Purposes Act authorizes the Secretary, in his discretion, to sell or lease tracts of national resource lands. 43 U.S.C. § 869 (1982); Town of Kremmling, 46 IBLA 213, 215 (1980); Board of County Commissioners, Ouray-County, Colorado, 22 IBLA 182, 189 (1975). Even if it were assumed these lands had been classified under the Recreation and Public Purposes Act, the Secretary or his duly authorized representative may reject an application without abusing his discretion if he determines that the public interest is best served by such rejection. Town of Kremmling, *supra* at 215-16; Board of County Commissioners, Ouray County, Colorado, *supra* at 189.

^{4/} Attached to appellant's statement of reasons is a copy of a letter dated Feb. 4, 1981, from James G. Watt, Secretary of the Interior, addressed to the Governor of Utah. The subject of the letter is the intent to make available small parcels of Federal land to meet community needs for uses such as schools, hospitals, and parks. One of the vehicles mentioned for accomplishing this goal is the Recreation and Public Purposes Act.

In his memorandum of December 20, 1983, the State Director set forth his policy decision that transfer of lands for wildlife habitat purposes is not usually appropriate under the authority of the Recreation and Public Purposes Act. He stated that this decision had been previously explained to officials of the Utah Department of Natural Resources. The State Director stated that the appropriate means to involve DWR with habitat management is through a Sikes Act Cooperative Agreement which can be tailored to any situation and gives as much control of the surface (short of ownership) as BLM and DWR feel is necessary to accomplish the desired objective. Further, BLM's policy against transfer of lands to DWR just to complete ownership of a section where the land requested is part of a block of public lands (and not an isolated tract) is reasonable. Thus, we find that the BLM policy relied on in these decisions is a reasonable determination of what is required in the public interest.

Appellant asserts that it was led to believe that the Recreation and Public Purposes Act program was the avenue to follow to effect a land transfer under the Good Neighbor Policy. There is no evidence in the record to indicate that appellant was misled, but even if it had been, the Department of the Interior is not bound to grant the applications where it has determined that it is not in the public interest to do so.

Appellant's assertions that it has expended funds to enhance the area for wildlife purposes and that wildlife was the primary consideration in applying for the lands is to no avail. Retention of the land is in accord with the mandate of the Federal Land Policy and Management Act of 1976 which calls for management of the public lands for, among other things, "food and habitat for fish and wildlife and domestic animals." 43 U.S.C. § 1701 (1982). The considerations enumerated in the State Office's decision for the policy against transferring lands pursuant to the Recreation and Public Purposes Act are sound. Appellant has offered no evidence to show that retention of the land is not in the public interest. 5/ Accordingly, rejection of appellant's applications must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Bruce R. Harris
Administrative Judge

5/ The record indicates that other means, not involving a patent of the land, are available to DWR to achieve its goal of preservation of wildlife habitat.